

Office of the Secretary of Defense

§ 105.6

Military Services. The Army, Navy, Air Force, Marine Corps, and Coast Guard (when operating as a part of the Navy).

Spouse. The husband or wife of a military member, if such spouse is not also a military member.

§ 105.4 Policy.

(a) No DoD official shall, directly or indirectly, impede or otherwise interfere with the right of a spouse of a military member to pursue and hold a job, attend school, or perform volunteer services on or off a military installation. Moreover, no DoD official shall use the preferences or requirements of a DoD Component to influence, or attempt to influence, the employment, educational, or volunteer service decisions of a spouse. Neither such decision of a spouse, nor the marital status of the member, shall affect, favorably or adversely, the performance appraisals or assignment and promotion opportunities of the member, subject to the clarification in paragraph (b)(2) of this section.

(b) *In furtherance of this policy.* (1) In discharging their responsibilities, members of military promotion, continuation, and similar personnel selection boards are prohibited from considering the marital status of a military member, or the employment, educational, or volunteer service activities of a member's spouse.

(2) Personnel decisions, including those related to the assignments of military members, shall not be affected, favorably or adversely, by the employment, educational, or volunteer service activities of a member's spouse, or solely by reason of a member's marital status, subject to the following clarification:

(i) When necessary to ameliorate the personal hardship of a member or spouse upon the request of the member concerned, such as when a family member requires specialized medical treatment, educational provisions under DoD Instruction 1342.12¹ and Pub. L.

94-142, or similar personal preference accommodations.

(ii) To facilitate the assignment of dual-career military married couples to the same geographic area.

(iii) When otherwise required by law, such as instances in which a prohibited conflict of interest may exist between the official duties of a military member and the employment of the member's spouse.

(iv) When the Assistant Secretary of Defense (Force Management and Personnel), with the concurrence of the General Counsel, determines, on a case-by-case basis, for reasons of national security, that marital status is an essential assignment qualification for particular military billets or positions.

(3) Performance appraisals on members of the Military Services, including officer and enlisted efficiency or fitness reports, shall not contain any information regarding the employment, educational, or volunteer service activities of the member's spouse, or reflect favorably or adversely on the member based solely on the member's marital status.

§ 105.5 Responsibilities.

(a) The Secretaries of the Military Departments and the Heads of other DoD Components shall ensure compliance with this part.

(b) The Secretaries of the Military Departments shall issue regulations, enforceable under the Uniform Code of Military Justice (UCMJ), and appropriate regulations or other guidance applicable to civilian personnel, implementing this part.

(c) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall monitor compliance with this part.

§ 105.6 Effective date and implementation.

This part is effective February 10, 1988. The Secretaries of the Military Departments shall forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 60 days.

¹Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.